

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 334 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS
and
Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

PARMAR SOMABHAI AMBARAM

Appearance:

MR AJ DESAI for appellant

CORAM : MR.JUSTICE K.R.VYAS
and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 21/04/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE K.R.VYAS)

The learned Additional Sessions Judge, Mehsana in his well reasoned judgment dated 27-1-2000 passed in Sessions Case No.77 of 1999 convicted the respondent for the offence punishable under Sec.304 Part II IPC and awarded sentence to suffer 7 years R.I. and to pay a fine of Rs.2,000/-, in default, to undergo S.I. for one year. The State has challenged the said judgment in this appeal. Mr.A.J.Desai, learned APP contended that the learned Judge has committed an error in not convicting the accused for the offence punishable under Sec.302 as the accused inflicted one blow which stick on the head which is the vital part of the body of the deceased. It is not possible for us to accept the said submission. The incident in question has taken place out of trifling matter. The accused started quarrel with the deceased as the daughter of the deceased was throwing water on the road. It appears that the accused was not satisfied with the reply given by the deceased and thereafter started giving abuses to him and gave a blow on the head of the deceased. The deceased was thereafter removed to the hospital and died late at night. Thus, even if the prosecution case is accepted in toto, he cannot be convicted for the offence punishable under Sec.302 as the incident had taken place out of trifling matter. There was no premeditation for committing the offence as the blow with stick on the head of the deceased. Taking the cumulative effect of these facts, we agree with the ultimate conclusion of the learned trial Judge in passing the order convicting the respondent for the offence punishable under Sec.304 Part I and while passing the order of sentence of 7 years of imprisonment. There being no substance in this appeal, it is dismissed summarily.

(K.R.Vyas, J.)

(R.P.Dholakia, J.)

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